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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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In the Matter of

2000 Biennial Regulatory Review --  
Telecommunications Service Quality  
Reporting Requirements

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) CC Docket No. 00-229  
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**REPLY COMMENTS OF TIME WARNER TELECOM**

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February 16, 2001

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Time Warner Telecom Reply Comments  
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**REPLY COMMENTS OF TIME WARNER TELECOM**

**I. Introduction And Summary**

Time Warner Telecom ("TWTC"), by its attorneys, hereby submits these reply comments in response to the Notice of Proposed Rulemaking<sup>1</sup> in the above-referenced docket. In the *NPRM*, the Commission sought comment on whether it should eliminate the ARMIS Report 43.05, Table 1 that requires incumbent local exchange carriers ("ILECs") to report the quality of provisioning for special access circuits. Meaningful competition does not exist for these services. Rather than eliminating reporting requirements, therefore, the Commission should instead retain and improve them to ensure that the reported data on special access provisioning is consistent, complete, and accurate. Further, the Commission should not impose service quality reporting requirements on competitive local exchange carriers ("CLECs"). CLECs already have strong market-based incentives to provide superior quality service and can least afford the additional costs of increased regulatory burdens.

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<sup>1</sup> See 2000 Biennial Regulatory Review -- *Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking, 15 FCC Rcd 22113 (2000) ("*NPRM*").

## **II. The Commission Should Not Eliminate Reporting Requirements That Measure The Quality Of ILEC Provisioning Of Special Access Circuits.**

Section 11 of the Communications Act (“Act”) requires the Commission to review its regulations biennially and to repeal or modify any that it finds are “no longer necessary in the public interest as the result of meaningful economic competition” during the course of that review. 47 U.S.C. § 161. As part of its 2000 biennial review process, the Commission has proposed to eliminate most ILEC service quality reporting requirements, including ARMIS Report 43-05, Table 1, which measures, among other things, the quality of installation and repair of special access circuits provided to interexchange carriers. Commenters in this proceeding, including state commissions, overwhelmingly support maintaining the ARMIS service quality reporting requirements.<sup>2</sup> Because ILECs are not subject to meaningful economic competition, they continue to have the incentive and ability to degrade the quality of special access services provided to CLECs and interexchange carriers (“IXCs”). The ARMIS special access service quality reports provide essential data for CLECs to detect discriminatory, unjust and unreasonable provisioning of special access services by ILECs. At this time, the Commission should not eliminate these critically important service quality reports for special access.

While it is true that certain segments of the telecommunications marketplace are becoming subject to “meaningful economic competition,” that is not the case with special access services. As the Commission recognized in its *NPRM*, local competition is in its “relatively

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<sup>2</sup> See, e.g., Comments of The National Association of Regulatory Utility Commissioners, at 2 (“Telephone service quality information should be reported *at no less than its current level* unless a showing can be made that the reporting is not crucial to the monitoring of service quality.”) (emphasis in original); Comments of The Florida Public Service Commission, at 2 (“[W]e believe the FCC’s proposed actions to reduce reporting requirements are premature at this time and propose that instead, the FCC concentrate on taking the action necessary to make the service quality information more meaningful and useful.”); Comments of The Indiana Utility Regulatory Commission, at 3 (“The IURC encourages the FCC to keep the current ARMIS 43-05 Service Quality Report in its present form.”).

early stage[s] of development.” *NPRM* ¶ 11. ILECs continue to control over 93% of the local exchange market, as well as an even larger percentage of the market for channel terminations between the incumbent’s end office and the end-user customer.<sup>3</sup> As a result, carriers seeking special access services rarely have an alternative to the ILEC. Moreover, this is not simply an IXC issue. TWTC, and apparently other CLECs, regularly purchase high-capacity end-user connections from ILECs where TWTC cannot efficiently self-provision a loop facility.

Without meaningful competition, incentives remain for ILECs to degrade the quality of special access services provided to competitors. The ARMIS service quality reports were initially adopted in response to the Commission’s concerns that ILECs have incentives to degrade service under price cap regulation in order to increase profits.<sup>4</sup> In today’s marketplace, as competition has begun to emerge, ILECs actually have an *increased* incentive to degrade the quality of service for special access. Rather than viewing special access customers as long distance providers, they now view IXCs and CLECs as current competitors for local market revenues and future (and in some cases current) competitors for long distance revenues. The Commission has recognized as much in prior orders.<sup>5</sup>

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<sup>3</sup> See Industry Analysis Division, CCB, FCC, *Trends in Telephone Service* at 9-1 (Dec. 2000) (stating that CLECs served only 6.7% of end-user lines as of June 30, 2000 and that only about one-third of those lines are served by CLEC-owned local loop facilities).

<sup>4</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶¶ 334 (1990) (“In the earlier Orders in this docket, the Commission recognized the theoretical concern that LECs under price cap regulation might seek to increase their profits not by becoming more productive, but by lowering the quality of the service they provide.”).

<sup>5</sup> See *Applications of Ameritech Corp., Transferor, and SBC Communications, Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 107 (1999) (“*SBC-Ameritech Merger Order*”) (“[ILECs], which are both competitors and suppliers to new entrants, have strong economic incentive to preserve their traditional monopolies over local telephone service and to resist the introduction of competition that is required by the 1996 Act.”).

From a CLEC perspective, one important reason for retaining ARMIS special access service quality reports is to enable CLECs to compare the service performance of different ILECs. As the Commission has confirmed, so-called “benchmarking” is an invaluable tool in detecting unlawful practices. Benchmarking “provide[s] valuable information regarding the incumbents’ networks to regulators and competitors seeking, in particular, to promote and enforce the market-opening measures required by the 1996 Act and the rapid deployment of advanced services.”<sup>6</sup> The recent wave of ILEC mergers has reduced the availability of benchmarks. Loss of these benchmarks has already harmed “the public interest by severely handicapping the ability of regulators and competitors to use comparative practices analysis as a critical, and minimally-intrusive, tool for achieving the Communications Act’s objectives.” *SBC-Ameritech Merger Order* ¶ 101. Elimination of the ARMIS special access service quality data would deprive CLECs and IXC’s of another benchmark and further erode the public interest.

A second important reason to retain the special access service quality ARMIS reports is that it enables carrier purchasers to detect discrimination. TWTC has in some cases been able to obtain ILEC service quality reports that track TWTC’s special access orders.<sup>7</sup> But the only source of aggregate data for an ILEC’s special access performance is ARMIS. Thus, the only

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<sup>6</sup> *SBC-Ameritech Merger Order* ¶ 101. Notwithstanding this conclusion in the *SBC-Ameritech Merger Order*, the Commission did not establish new reporting requirements for special access in that order. Indeed, information as to the quality of ILEC special access is only available in ARMIS. However, in the *SBC-Ameritech Merger Order* and also in the *Bell Atlantic-GTE Merger Order*, the Commission required the parties to file ARMIS service quality reports quarterly rather than annually to mitigate harms created by the merger. In no event should the Commission eliminate the ARMIS service quality reporting requirements imposed as conditions to these mergers in its current review of reporting requirements. See *SBC-Ameritech Merger Order* ¶ 404; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, ¶ 329 (2000).

<sup>7</sup> As described below, this data has unfortunately been fraught with inconsistencies. Nevertheless, it is better than the complete absence of company-specific data.

way for TWTC to determine whether it is at least receiving service on a par with other special access customers of the same ILEC is to compare that data with the company-specific.

Finally, maintaining the ARMIS special access service quality reports also addresses the Commission's concern, expressed in the *NPRM*, about the quality of end-user consumer services. *NPRM* ¶ 11. Provisioning of wholesale special access services directly affects the quality of service provided to end-user customers. As discussed previously, ILECs continue to have incentives to degrade competitors' special access services. These incentives result from the marketplace reality that degraded service to competitors results in degraded service to end users. Even though CLECs must rely on the incumbents for installation and repair of the special access circuits, any inefficiency on the incumbents' part will be perceived by the CLECs' customers as poor service quality on the CLECs' part. Since the Act became law five years ago, ILEC service quality has continued on a downward spiral in spite of emerging competition.<sup>8</sup> This decline demonstrates that competition is not yet sufficient to ensure good service quality to either end users or carriers. Clearly, ARMIS service quality reports are still needed to protect end-user customers from further deteriorating service as a result of discriminatory, unjust and unreasonable provisioning of special access services to CLECs. As the Commission has recognized, "the existing service quality reports are the least burdensome method of monitoring

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<sup>8</sup> See Comments of WorldCom, at 2 ("[E]very major ILEC's average installation interval for special access circuits increased between 1997 and 1999. The ARMIS service quality data also shows that between 1997 and 1999 the percentage of access orders installed by the committed due date declined significantly at Bell Atlantic and Pacific Bell.") (emphasis in original); see also Comments of Michigan Public Service Commission, at 1 (discussing "dramatic degradation" of service quality provided by Ameritech/SBC); Comments of Texas Office of Public Utility Counsel, at 5-7 (discussing problems with ILEC retail service quality requiring regulatory intervention).

the quality of telecommunications service during the transition to a competitive market.”<sup>9</sup> The significant benefits of these reports for regulators, carriers, and end users on balance outweigh the minimal burden to ILECs of continuing reporting, when the incumbents already have systems and personnel in place to fulfill this long-established reporting requirement.

### **III. The Commission Should Improve The Reporting Requirements To Ensure That The Reported Data On Special Access Provisioning Is Meaningful.**

TWTC’s own experience confirms that the ability of carriers to rely on ARMIS to detect discriminatory provisioning will be greatly enhanced by consistent, transparent reporting requirements. Recently, TWTC began to suspect that it was receiving inferior special access services from certain incumbent LECs. As mentioned, in response to repeated requests, TWTC finally obtained voluntary verbal commitments from certain of the larger incumbents that they would provide carrier-specific data for special access provisioning and maintenance and repair. Although TWTC has received carrier-specific data from these carriers, it does not receive comparable aggregate data. Without aggregate data, TWTC has no “apples-to-apples” benchmarks against which to compare its carrier-specific data. Faced with this dilemma, TWTC turned to ARMIS Report 43-05, Table 1. Specifically, TWTC examined Row 112, which measures the percentage “Commitments Met” for all special access services, and Row 121, which measures the “average interval” from the time the incumbent carrier receives a trouble report to the time that trouble is resolved.

When attempting to confirm that these benchmarks were comparable to the carrier-specific installation and repair data that TWTC was receiving, TWTC encountered a number of

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<sup>9</sup> 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements, Report and Order and Fifth Memorandum Opinion and Order, 14 FCC Rcd 11443, ¶ 39 (1999).



problems.<sup>10</sup> Specifically, while TWTC could look to ARMIS for a measurement of how often incumbent LECs met installation or repair commitments for special access services, it could not be sure that the TWTC-specific data had been calculated based on those same intervals or rules. For example, Row 112 is “calculated by dividing the number of installation orders or circuits from the Interexchange carriers/customers completed by the commitment date by the total number of installation orders or circuits.” The “commitment date” is in turn “based on the ILEC’s installation intervals.” These intervals are ostensibly published by the ILECs and kept on file with the Commission. However, notwithstanding repeated inquiries with the FCC and the ILECs, TWTC was unable to locate the applicable ARMIS intervals. As a result, it was forced to rely on whatever installation intervals it could glean from other sources (including incumbents’ web pages, which typically reported different intervals depending on a number of factors, including the capacity of the special access circuit). Moreover, although ARMIS indicates that “[c]ommitment dates may be extended at the customer’s request,” it is not clear whether or how these extended dates are reported. For example, if on the committed due date an ILEC calls from the field to report that it has no facilities, and that it must extend or cancel the due date, and the carrier agrees to extend, rather than cancel the order, has that date been extended at the customer’s request? Unresolved issues like this demonstrate that the definitions underlying Row 112 must be clarified or modified with an eye to ensuring that CLECs can compare the performance data that is company-specific against aggregate data. One way to accomplish this is

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<sup>10</sup> The Commission also requested comment on the ability of carriers to obtain performance data based on their bargaining positions *vis a vis* the incumbent. *NPRM* ¶ 39. Not only is TWTC unable to obtain enforceable performance reporting commitments from the incumbent LECs, it has also experienced problems with unilateral modifications to the substance of these reports from month-to-month, without explanation or justification. Oftentimes these changes result in previously poor performance reported on one basis being miraculously transformed into superior performance based on another criterion.

to require incumbents to report percentages based on a specific number of days (*e.g.*, x% commitments met within 5 business days, within 10 business days, within 15 business days, and in greater than 15 business days), rather than on an ambiguous “installation interval” that likely varies from carrier to carrier. The Commission should further clarify the definition of “extended” commitment dates and how those data are reported.

TWTC has encountered similar problems with Row 121, which measures the “average interval, in hours to the nearest tenth based on a stopped clock, from the time of the reporting carrier’s receipt of the trouble report to the time of acceptance by the complaining carrier/customer. This interval is defined as ‘Interval measured in clock hours, excluding only time when maintenance is delayed due to circumstances beyond the ILEC’s control. Typical reasons for delay include, but are not limited to, premise access when a problem is isolated to the location or to absence of customer support to test facilities.’” As noted in the NARUC White Paper, telecommunications carriers have different internal business rules that dictate whether a call into the repair center is reported as a “trouble.” *See NPRM*, Appendix C, at 26. “One carrier may have a list of twenty or more reasons for excluding a trouble ticket from the report, while another utility may have only two or three acceptable exceptions.” *Id.* Not surprisingly, state commissions “have encountered significant discrepancies in the exceptions found in audits of telecommunications carriers.” *Id.* TWTC agrees with NARUC’s recommendation that, rather than filter these reports through their internal rules, incumbent LECs should include all troubles reported. *Id.* As noted, this would decrease the reporting burden on incumbents while likely increasing the accuracy of those reports. *Id.* Similar inconsistencies no doubt arise with regard

to when the interval clock is “stopped” due to “circumstances beyond the ILEC’s control.”<sup>11</sup> The Commission should adopt a clear and appropriate definition of what constitutes “circumstances beyond the ILEC’s control.” Without such a change, it is difficult if not impossible to understand how this interval compares to similar carrier-specific intervals, or how it compares across ILECs, who might define those circumstances differently.

Similarly, the Commission should institute an audit procedure designed to uncover precisely these types of carrier-to-carrier discrepancies. Such procedures would also help alleviate concerns about the reliability of the data reported by incumbent LECs. With regard to timing, TWTC believes that the Commission should require ILECs to post ARMIS information quarterly on their websites. Currently, with certain exceptions, incumbent LECs are required to report ARMIS data only on an annual basis. This long lag time effectively acts to shield any discriminatory or unjust provisioning from detection. Posting data more frequently would preclude incumbent LECs from avoiding or delaying scrutiny when service quality problems arise. Finally, the Commission should clarify that special access service quality data reported by ILECs must include data on provisioning of special access offerings to all carriers, including CLECs, and not to IXC only. TWTC urges the Commission at a minimum to take the steps outlined above to ensure that carriers have timely access to consistent, transparent, and reliable data.

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<sup>11</sup> See Comments of The Public Utilities Commission of Ohio, at 3-4; Comments of The Florida Public Service Commission, at 3.

#### **IV. The Commission Should Not Impose Service Quality Reporting Requirements On CLECs.**

The Commission should not broaden the scope of carriers subject to service quality reporting by requiring CLECs to report end-user service quality data. CLECs have no incentive to degrade their service quality and requiring them to report on service quality would impose unnecessary burdens on competitive carriers. No commenter in this proceeding has demonstrated that CLEC service quality to end users is deficient, and therefore, requires regulatory intervention.<sup>12</sup> Competitive carriers are subject to fierce competition from incumbents and other CLECs, which ensures that they provide good service quality to their end-user customers. Further, unlike ILEC reporting requirements, new CLEC service quality reporting requirements would create a tremendous burden on CLECs' limited resources by requiring CLECs to pour resources into developing internal systems and dedicating personnel to comply with the requirements. CLECs already have strong incentives to differentiate their services from their competitors through superior service quality. Both the Act's procompetitive goals and its deregulatory intent counsel against imposing service quality reporting requirements on CLECs.

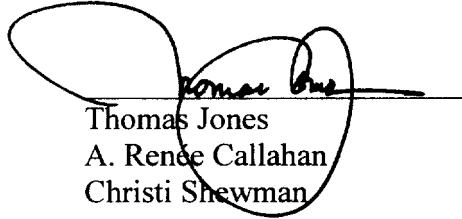
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<sup>12</sup> In fact, several state agencies, those most involved in monitoring service quality to end users, agree that CLEC service quality reporting is not necessary. *See* Comments of Texas Office of Public Utility Counsel, at 15 ("OPC believes that the cost to CLECs of requiring them to provide service quality data far outweighs the benefits to consumers of doing so."); Comments of The Public Utility Commission of Texas, at 4-5.

**V. CONCLUSION**

The Commission should establish telecommunications service quality reporting requirements in accordance with the recommendations made herein.

Respectfully submitted,



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